THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION Nos.20173 of 2004, 20179, 20180, 20182, 20183, 20186, 21895, 21898 and 21905 of 2004; 2807 and 2810 of 2005 and 4189 of 2006

AND

I.T.T.A.Nos.47 of 2003, 15, 47, 219, 220, 222, 223, 224, 225, 240, 250, 257, 258, 264, 265, 266, 267, 275, 278, 279, 280, 281, 283, 284, 285, 288, 289, 291, 293, 294, 295, 296, 297, 300, 301, 302, 303, 304, 309, 312, 313, 314, 315, 316, 317, 321, 322, 324, 326, 327, 328, 329, 331, 332, 335, 337, 338, 339, 340, 342, 344, 348, 349, 351, 352, 353, 355, 357, 358, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 372, 373, 374, 376, 377, 380, 381, 383, 384, 385, 386, 391, 395, 396, 397, 399, 400, 402, 403, 404, 405, 407, 408, 411, 413, 415, 417, 418, 419, 420, 421, 435 and 440 OF 2005; 3, 5, 6, 9, 12, 13, 14, 15, 16, 17, 18, 19,20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36,37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50,51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66,67, 86, 87, 88, 89, 90, 91, 93, 94, 95, 96, 97, 98, 99, 100, 101,103,104, 105, 106, 107,108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 129,130, 131, 138, 139, 140, 141, 142, 143, 189, 190,218, 220,
223, 258, 260, 262, 275, 288, 290, 292, 295, 298, 299, 300, 301 and 302 of 2006

Date: 24.10.2006

W.P.20173 of 2004

Between:

M.V.Chinna Rao & others.
…Petitioners

And

Deputy Commissioner of Income Tax, Circle-1, Eluru & Others.

……Respondents

THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

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COMMON JUDGMENT: (Per Hon'ble Sri Justice Bilal Nazki)

These writ petitions and I.T.T.As. raise common questions of law and fact therefore, they have been heard together and are being disposed of by this common judgment. For appreciation of facts, we are taking the pleadings in Writ Petition No.4189 of 2006, as it is more comprehensive and in this case, the Circular of the Central Board of Direct Taxes in F.No.174/5/2001, dated 23.04.2001 has also been challenged.

The petitioner in this case took voluntary retirement

from Andhra Bank after putting in requisite number of years of service. Consequent to his retirement, he received a sum of Rs.11,14,241/- as ex-gratia. In the returns filed by him for the assessment year 2001-02 on 30.03.2002, he claimed exemption under Section 10(10C) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') to the extent of rupees five lakhs as permitted by the Statute. He also claimed relief under Section 89 of the Act on the balance figure of Rs.3,32,010/-, which comes out to be Rs.46,315/-. He claimed a refund of Rs.38,425/-
.

The income tax return was processed under Section 143(1) of the Act, accepting the income and disallowing the relief claimed under Section 89 and the Income-tax Department raised a demand of Rs.11,380/-. The petitioner filed an application under Section 154 of the Act, seeking rectification of the assessment. It was rejected by the Assessing Officer by an order dated 30.11.2004. The petitioner filed a revision under Section 264 of the Act before the Commissioner of Income-tax. Revision was rejected on 18.10.2005 and the said order is also challenged in the writ petition besides the circular of the Central Board of Direct Taxes, to which a reference has been made hereinabove.

Once relief is granted under Section 10 (10C) of the Act, whether further relief can be granted to assessees under Section 89 of the Act, is the question, which will have to be gone into in this writ petition and other writ petitions and I.T.T.As.

In I.T.T.As., the appellants went up to the Income-tax Tribunal and Income-tax Tribunal also rejected their pleas. Facts are almost same in all the petitions and are not at dispute.

The arguments made at the bar by the learned counsel on behalf of the petitioners are that the respondents failed to see that the compensation received by the assessees on their voluntary retirement is in the nature of profit in lieu of salary. The amount so received would normally be assessed at a higher rate of tax as is shown in the computation submitted for the purpose of claiming Section 89 relief. It is further submitted that Section 10 (10C) and Section 89 of the Act operate in two different areas and once benefit under Section 10 (10C) is granted, that would not close doors for benefits available to the assessees. Section 10 (10C) of the Act deals with exemptions whereas Section 89 of the Act grants relief under certain circumstances with respect to salary income offered to tax after claiming the exemption. According to

the petitioners, Rule 21A(1)(c) clearly stipulates that if an assessee receives in any financial year any payment which under Section 17 (3) is a profit in lieu of salary, then the relief to be granted under Section 89 can be in accordance with sub-rule (4) of Rule 21A. On the other hand, the respondents contended that Section 10 (10C) and Section 89 of the Act are no doubt two distinct and independent provisions, providing for meeting two different situations and they operate in different realms and are mutually exclusive. While Section 10 (10C) of the Act is an exclusive provision for granting relief to the employees receiving compensation in the context of Voluntary Retirement Scheme, Section 89 of the Act is a general provision granting relief to the employees receiving arrears or advance of salary, or profits in lieu of salary etc. It is further contended by respondents that Section 10 (10C) of the Act has been specifically brought on Statute books for the purpose of granting exemption to a specific limit in respect of compensation received at the time of voluntary retirement or termination in accordance with a scheme formulated by the employer. Section 10 (10C) of the Act is a self-contained provision and as such, the claim for relief in respect of compensation received in the context of Voluntary Retirement Scheme has to be considered under the same provision, but not under any other provision. A person availing the benefit of Section

10 (10C) of the Act to an extent of rupees five lakhs would not be able to claim further reliefs under Section 89 of the Act in respect of the balance amount. The learned counsel for the parties have also relied on some of the judgments. But, before that, a look on relevant provisions of the Act would be necessary. Section 10 (10C) of the Act lays down—

Section 10 (10C) of the Income Tax Act, 1961 reads as under:

> "**10(10C) Any amount received (or receivable) by an employee of =**
>
> (i) a public sector company; or
> (ii) any other company; or
> (iii) an authority established under a Central, State or Provincial Act; or
> (iv) a local (authority; or)
> (v) a co-operative society; or
> (vi) a University established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a University under section 3 of the University Grants Commission Act, 1956 (3 of 1956); or
> (vii) an Indian Institute of Technology within the meaning of clause (g) of section 3 of the Institutes of Technology Act, 1961 (59 of 1961); or

[(viia) any State Government; or]

[(viib) the Central Government; or]

[(viic) an institution, having importance throughout India

or in any State or States, as the Central Government may, by notification in the Official Gazette, specify in this behalf; or]

(viii) such institute of management as the Central Government may, by notification in the Official Gazette, specify in this behalf;]

[on his] [voluntary retirement or termination of his service, in accordance with any scheme or schemes of voluntary retirement or in the case of a public sector company referred to in sub-clause (i), a scheme of voluntary separation, to the extent such amount does not exceed five lakh rupees]:

Provided that the schemes of the said companies or authorities [or societies or Universities or the Institutes referred to in sub-clauses (vii) and (viii)], as the case may be, governing the payment of such amount are framed in accordance with such guidelines (including *inter alia* criteria of economic viability) as may be prescribed:

Provided further that where exemption has been allowed to an employee under this clause for any assessment year, no

exemption thereunder shall be allowed to him in relation to any other assessment year;]"

Under Section 17(3) of the Act, "profits in lieu of salary" includes—

(i) the amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the termination of his employment or the modification of the terms and conditions relating thereto;

(ii) any payment (other than any payment referred to in clause (10) [,clause (10A)] [,clause (10B)], clause (11), [clause (12) [,clause (13)] or clause (13A)] of section 10), due to or received by an assessee from an employer or a former employer or from a provident or other fund, to the extent to which it does not consist of contributions by the assessee or [interest on such contributions or any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy;

Explanation – For the purposes of this sub-clause, the expression "Keyman insurance policy" shall have the meaning assigned to it in clause (10D) of section 10;]"

Section 89 of the Act is part of the Chapter 'Relief for

Income-tax' under the title 'Relief when salary, etc., is paid in arrears or in advance'. It lays down—

> "Where an assessee is in receipt of a sum in the nature of salary, being paid in arrears or in advance or is in receipt, in any one financial year, of salary for more than twelve months or a payment which under the provisions of clause (3) of section 17 is a profit in lieu of salary, or is in receipt of a sum in the nature of family pension as defined in the *Explanation* to clause (iia) of section 57, being paid in arrears, due to which his total income is assessed at a rate higher than that at which it would otherwise have been assessed, the Assessing Officer shall, on an application made to him in this behalf, grant such relief as may be prescribed]"

Rule 21 of the Income-tax Rules also is framed under the heading "Relief when salary is paid in arrears or in advance, etc". Rule 21A (1)(c) lays down—

> "Where the payment is in the nature of compensation received by the assessee from his employer or former employer at or in connection with the termination of his employment after continuous service for not less than three years and where the unexpired portion of his term of employment is also not less than three years, in accordance with the provisions of sub-rule (4)"

The learned senior counsel for Department submits that the requirements of the law under Section 89 are that the salary should be paid which was in arrears or advance and Rule 21A of Income-tax Rules applies only if it was a case of advance salary or arrears of salary. Section 17(3) of the Act defines profits in lieu of salary and includes the amount of any compensation due to be received by an assessee from his employer in connection with termination of his employment or the modifications of the terms and conditions relating thereto. By no stretch of imagination, a person receiving benefits under a voluntary retirement scheme would fall within the purview of Section 89 of the Act because, Section 10 (10C) does not talk of any salary or any profits in lieu of salary. It talks of an amount received by an employee under a scheme for voluntary retirement or termination of service. Section 10 (10C) is a special provision enacted to benefit those who retire or whose services are terminated in accordance with a scheme and it also provides under second provision that where exemption has been allowed to an employee under the class for any assessment year, no exemption thereunder would be allowed to him relating to any other assessment year. Mr. S.R. Ashok further submits that from a bare perusal of these provisions of law, it becomes clear that once benefits have been taken under Section 10 (10C) of the Act under a voluntary retirement scheme,

no further relief can be granted under Section 89 of the Act, and if benefits are taken under Section 10 (10C) of the Act, there is no question of having been paid any salary in arrears or in advance. Sections 89 and 10 of the Act operate in altogether two different fields and Section 10, as a matter of fact, grants relief in many many situations including a situation in which assesses retire under a voluntary retirement scheme.

The learned counsel for petitioners however contend that what is required under Section 89 of the Act is that the amounts receivable should be either arrears or advance and if it is interpreted in terms of the definition to 'Profits in lieu of salary', then it would be quite clear that whatever is being received by a retired employee, is profit in lieu of salary.

Coming to the judgments, the first judgment relied on by the petitioners is **Sant Raj v. O.P.Singla**[1]**.** This was a case where the question considered by Supreme Court was, "*Whethker the termination of service of S/Shri Sant Raj and Itwari Lal Sherya is illegal and/or unjustified and if so to what relief are they entitled ?"*. The Supreme Court found that the termination was illegal. It also found that the persons concerned were out of job for twelve years and it was in their own interest that instead of

reinstatement under an unwilling and hostile employer, they should be provided adequate compensation which would meet the ends of justice. Accordingly, the Supreme Court held them to be entitled to back wages in full for a period of twelve years and each one was entitled to get Rs.1,50,000/- towards back wages and Rs.50,000/- was given as compensation in lieu of reinstatement and in all, each one of the appellants were given Rs.2,00,000/-. Taking note of Section 89 of the Act, the Supreme Court held that in terms of Section 89 of the Act read with Rule 21A of the Income-tax Rules, salary should be spread over a period of twelve years and as also the compensation in lieu of reinstatement relief. This case, as such, is not relevant for the purposes of present controversy. Admittedly the Supreme Court granted arrears of salary of twelve years and as such the appellants before the Supreme Court were entitled to relief under Section 89 of the Act because, what they were drawing in terms of the orders of the Supreme Court were arrears of the salary and in any case, they had not got any benefit under Section 10 (10C) of the Act.

Again the same question in similar circumstances, was decided by Supreme Court in a judgment in **K.C.Joshi v. Union of India**[2].

The question in **Commissioner of Income-tax v. Visalakshi**[3] was, "*Whether the Appellate Tribunal was right and had valid materials to hold that the ex-gratia compensation of Rs.63,230 received by the assessee consequent on his resignation from the employment is entitled to the relief under section 89(1) of the Income-tax Act ?*". From the question itself which the Supreme Court decided, it is discernable that it was an ex-gratia compensation granted to the employee consequent to his resignation and not cessation of service in terms of a scheme formulated under Section
10 (10C) of the Act.

Another judgment relief upon by the appellants is **Ganti (V.R) v. Commissioner of Income-tax**[4]. This was also a case where employer paid to the assessee Rs.10,500/- being salary for four months as ex-gratia in addition to the terminal benefits. Therefore, admittedly, what the assessee received in this case was salary.

Appellants also rely on **Commissioner of Income-tax v. M.Raman**[5]. This is a very short judgment and does not lay down any precedent.

Next judgment relied upon by the appellants is **Y.S.C.Babu v. Chairman and Managing Director,**

Syndicate Bank[6]. This judgment is relevant for the purpose of present case to the extent that the entire compensation/ex-gratia payable to the petitioner under the VRS was salary in terms of Section 17(3) of the Act, but this declaration was made in the context as to whether Deduction at Source could be made under Section 192 of the Act or not.

Learned counsel for appellants also relied on judgments in (1) **Commissioner of Income-tax v. G.V.Venugopal**[7], **(2) Income-tax Officer v. Dilip Shirodkar**[8], **(3) Commissioner of Income-tax v. P.Surendra Prabhu**[9] **and (4) State Bank of Travancore v. Central Board of Direct Taxes**[10]**.**

Out of these judgments, **Commissioner of Income-tax v. P.Surendra Prabhu** (9 supra) needs a mention because, in this case, the Karnataka High Court considered almost the similar question which is before us. The Karnataka High Court, while dealing with the similar question, held—

> "In conclusion, it is contended that there is no quarrel or issue as to the applicability of section 10(10C) of the Act. The bank has taken into account the exemption under section 10(10C) of the Act, without any demur

from the Revenue, for the purposes of determination of tax to be deducted at source. Further what is being taxed as “profits in lieu of salary” is the compensation received in accordance with the scheme which is in excess of Rs.5 lakhs. It is undisputed fact, that even the Revenue has assessed the same as “profits in lieu of salary” in the cases of employees. The only dispute raised by the Revenue is, that in accordance with the second proviso to section 10 (10C) of the Act, the amount that is not exempted under section 10(10C) is not to be considered for giving relief under section 89(1) of the Act. On a plain reading of the proviso, it is clear, that what the proviso bars is an allowance under this section, viz., section 10(10C) of the Act for any other assessment year when the assessee makes such claim in the event of getting further compensation from the same or any other employer. Nowhere in the section is the relief to be granted under any of the provisions of the Act barred. In fact, what is contemplated under section 10(10C) of the Act is an exemption, under section 89(1) of the Act, what the assessee gets is relief. There is no exemption with regard to the income, which is required to be assessed as “profits in lieu of salary”. In fact, where the Legislature intended to bar a specific relief under other provisions of the Act once some relief is obtained under any provision, it is made specific in the section itself.”

We are in respectful agreement with the opinion of the

judgment of the Karnataka High Court.

The judgment of Kerala High Court in **State Bank of Travancore v. Central Board of Direct Taxes** (10 supra) has also directly considered this question. In this judgment, the Court, however, held that when there are two interpretations possible, one in favour of assessee must be accepted, to which, an exception has been taken by Mr.S.R.Ashok, Senior Advocate appearing for the other side. But without going to the question whether two interpretations are possible, we feel that where an employee has taken retirement under the Voluntary Retirement Scheme or is otherwise terminated from service, what he receives is compensation in lieu of service in terms of Section 17(3) of the Act and what has been barred by second proviso to Section 10(10C) of the Act is an exemption and not a relief. The relief under Section 89 of the Act is available to everybody and exemptions are available to the classes which have been mentioned in various provisions of the Act. In any case, Section 89 does not grant any exemption. The Kerala High Court stated –

> "The status of an employee whose service has been terminated by way of disciplinary proceedings cannot be on a higher pedestal than a person who took voluntary retirement. Compensation received by an employee by

way of termination of service would get the benefit of Section 89(1) of the Act, then we fail to see why the benefit be not extended to employees who receive compensation by way of voluntary retirement. Literally termination means ending, the consequence is the same, the employee is ceased to be in employment either by way of disciplinary proceeding or by availing of the benefit of voluntary retirement scheme."

However, Mr.S.R.Ashok submits that a person who is terminated from service would not get any benefit under Section 10(10C) of the Act. That may be true, but that is a provision enacted for encouraging voluntary retirements in public sector in order to meet the efficiency and as a matter of fact, Section 10(10C) is by way of an incentive.

The learned senior counsel Mr.S.R.Ashok relies on a judgment of Supreme Court in **Commissioner of Income-tax v. Venkateswara Hatcheries (P) Ltd.**[11] to canvass that the basic rule of interpretation was that the purport and object of the Act must be given its full effect and the entire Statute must be read as a whole and purpose construction should be given to the Legislation. There is no quarrel with that principal and that principle has not been given a go-bye while deciding this case. In fact, Section 10 (10C) has been created to give an added

relief to those who come under a voluntary scheme framed under the provisions and Section 89 of the Act is applicable to everybody and is not by way of any relief, whereas Section 10 (10C) gives a relief.

For these reasons, we allow the writ petitions, quash the impugned orders and dismiss the I.T.T.As.

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(BILAL NAZKI,
J)

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(G. CHANDRAIAH, J)

24th October 2006

ajr

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[1] 163 ITR 588.
[2] 163 ITR 597
[3] 206 ITR 531(MADRAS)
[4] 216 ITR 48 (AP)
[5] 245 ITR 856 (MADRAS)
[6] 253 ITR 1 (AP)
[7] 273 ITR 307
[8] 274 ITR (A.T) 6
[9] 279 ITR 402 (KARNATAKA)
[10] 282 ITR 587 (KERALA)
[11] (1999) 3 SCC 632